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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JUN 17 2004

JAMES R. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

8 Attorneys for Plaintiffs  
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12 UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF WASHINGTON  
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16 WORKLAND & WITHERSPOON, PLLC, and  
17 GREGORY LIPSKER,

18 Plaintiffs,  
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20 v.  
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22 LIBERTY INTERNATIONAL  
23 UNDERWRITERS, INC. and LIBERTY  
24 MUTUAL INSURANCE COMPANY,  
25

26 Defendants.  
27

CV-04-0207-EFS

No.

COMPLAINT FOR  
DECLARATORY  
JUDGMENT

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29 Plaintiffs, Workland & Witherspoon, PLLC, and Gregory Lipsker,  
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31 by their undersigned attorneys, allege as follows:  
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I. JURISDICTION AND VENUE

1. Plaintiff Workland & Witherspoon, PLLC, is a Washington professional limited liability corporation with its principal place of business in Spokane County in the Eastern District of Washington.
2. Plaintiff Gregory Lipsker is a lawyer licensed to practice in the State of Washington and a principal in the Workland & Witherspoon firm. Mr. Lipsker works and resides in Spokane County in the Eastern District of Washington.
3. Defendant Liberty International Underwriters, Inc. ("LIU") is a foreign corporation with its principal place of business in New York, New York. LIU is a division, subsidiary or affiliate of defendant Liberty Mutual Insurance Company ("Liberty Mutual"), and is doing business in Spokane County in the Eastern District of Washington.
4. Liberty Mutual is a foreign corporation with its principle place of business in Boston, Massachusetts. Liberty Mutual is licensed to do insurance business in the State of Washington and is doing business in Spokane County in the Eastern District of Washington.

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5. This court has jurisdiction under 28 U.S.C. §§ 1332(a) and (c) because the parties are of diverse citizenship and because the amount in controversy exceeds \$75,000.

6. Venue is proper in the Eastern District of Washington under 28 U.S.C. §§ 1391(a) and (c) because defendants reside in this judicial district and because a substantial part of the events or omissions giving rise to this action occurred in this district.

7. The court has authority to issue a declaratory judgment under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57 because an actual controversy within its jurisdiction exists. The court also has authority under the Uniform Declaratory Judgment Act, RCW 7.24.190.

## II. FACTS

8. Workland & Witherspoon is the named insured in Lawyers Professional Liability Policy No. LPM197581-0103 ("the policy") issued by defendants. Mr. Lipsker is an insured under the policy. A true and accurate copy of the policy is attached to this complaint as Exhibit 1 and is incorporated by reference. The policy provides, in part, as follows:

**I. Coverage**

**A. Professional Liability and Claims Made Clause:** This policy shall pay on behalf of each **Insured** all sums in excess of the deductible amount up to the limits of liability stated in the Declarations which the **Insured** shall become legally obligated to pay as damages as a result of **CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD**

1. caused by any act, error or omission for which the **Insured** is legally responsible ...

and ... arising out of the rendering or failure to render **professional legal services** ...

**B. Consent to Settle, Defense:** The Company shall defend any **claim** against any **Insured** including the appeal thereof seeking **damages** to which this insurance applies even if any of the allegations of the suit are groundless, false, or fraudulent ....

9. The policy covers claims made against the plaintiffs and reported to LIU in the period from January 1, 2003 to January 1, 2004.

10. On or about June 30, 2003, Workland & Witherspoon reported a potential claim by Albert M. Zlotnick against Mr. Lipsker and Workland & Witherspoon to LIU. A true and accurate copy of the letter notifying LIU of the claim is attached to this complaint as Exhibit 2 and is incorporated by reference

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11. On March 22, 2004, Workland & Witherspoon received a demand letter and draft complaint from James B. Stoetzer of Lane Powell Spears Lubersky, LLP, counsel for Mr. Zlotnick.

12. On or about March 23, 2004, Workland & Witherspoon tendered the defense of Mr. Zlotnick's claim against Workland & Witherspoon and Mr. Lipsker to LIU. A true and accurate copy of the tender letter is attached to this complaint as Exhibit 3 and incorporated by reference.

13. On or about March 30, 2004, LIU denied coverage for Mr. Zlotnick's claim and notified plaintiffs that it would not defend or indemnify them. LIU took the position that coverage was excluded under Exclusion 5 of the policy. A true and accurate copy of LIU's letter notifying plaintiffs of its denial of coverage is attached as Exhibit 4 to this complaint and incorporated by reference.

14. On April 30, 2004, Mr. Zlotnick filed "Plaintiff's Complaint for Negligence, Negligent Misrepresentation, Breach of Contract and Breach of Fiduciary Duty" ("the Zlotnick Complaint") in the United States District Court for the Eastern District of Washington against Workland & Witherspoon, PLLC, Gregory Lipsker and Jane Doe

1 Lipsker. A true and accurate copy of Mr. Zlotnick's complaint in  
 2 that action, Cause No. CV-04-0140-AAM, ("the Zlotnick action") is  
 3 attached to this complaint as Exhibit 5 and incorporated by  
 4 reference.  
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6  
 7 15. On or about May 4, 2004, LIU withdrew its denial of coverage under  
 8 Exclusion 5, and instead disclaimed responsibility for both defense  
 9 and indemnity under Exclusion A(2)(a). A true and accurate copy of  
 10 the May 4, 2004, letter from LIU's counsel denying coverage under  
 11 Exclusion A(2)(b) is attached as Exhibit 6 to this complaint and  
 12 incorporated by reference.  
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 15 16. Exclusion A(2)(b) in the policy reads as follows:  
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 19 **IV. Exclusions**

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 21 A. This policy does not apply:

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 24 2. to **claims** arising out of any **Insured's** services and/or  
 25 capacity as:

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 27 a. an officer, director, partner, trustee or employee of a  
 28 corporation ... or any other business enterprise ...  
 29 other than that of the **Named Insured** ...

30 17. The claims and causes of action asserted in the Zlotnick action do  
 31 not arise "out of any Insured's services and/or capacity as an officer,  
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1 director, partner, trustee or employee of a corporation ... or other  
2 business enterprise ... other than that of the Named Insured.”

3 18. The claims and causes of action asserted in the Zlotnick action arise  
4 from the plaintiffs’ practice of law. Mr. Zlotnick alleges he “was  
5 continuously represented by” Mr. Lipsker and that “all acts and  
6 omissions ... were done on behalf of and for the benefit of Workland  
7 & Witherspoon and within the scope and authority of Mr. Lipsker’s  
8 duties and responsibilities as an agent of Workland & Witherspoon.”  
9 *Zlotnick Complaint*, ¶3. Mr. Zlotnick alleges Mr. Lipsker and  
10 Workland & Witherspoon breached “their contractual, fiduciary, and  
11 common law duties ... during the course of the legal representation.”  
12 *Id.*, ¶ 27.

13 19. All of the specific acts and omissions attributed to Mr. Lipsker  
14 and/or Workland & Witherspoon by Mr. Zlotnick relate to the  
15 provision of professional legal services.

### 16 III. CLAIMS AND CONTROVERSY

17 20. The policy issued to plaintiffs by LIU and Liberty Mutual provides  
18 coverage for the claims and causes of action asserted against  
19 plaintiffs in the Zlotnick action.

1 21.LIU and/or Liberty Mutual owe a duty to plaintiffs to defend and  
2 indemnify them in the Zlotnick action.

3 22.A controversy exists between plaintiffs and defendants as to whether  
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5 LIU and/or Liberty Mutual owe plaintiffs a duty to defend them in  
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7 the Zlotnick action and to pay any settlement, damages or judgment  
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9 which plaintiffs may become liable to pay.

10 23.A judicial declaration interpreting the parties' rights and  
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12 responsibilities is necessary to resolve whether defendants are  
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14 obligated to provide coverage under the policy, including a  
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16 declaration as to defendants' obligation to defend and indemnify  
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18 plaintiffs in the Zlotnick action.

19 24.Plaintiffs seek declaratory judgment under the Uniform Declaratory  
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21 Judgments Act, RCW 7.24.190, and 28 U.S.C. § 2201, and request  
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23 that the court order a speedy hearing and advance this matter on the  
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25 calendar pursuant to Fed. R. Civ. P. 57.

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27 **IV. REQUEST FOR RELIEF**

28 Plaintiffs request that the court grant the following relief:

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30 25.Enter judgment in favor of plaintiffs declaring that the policy of  
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32 insurance issued by defendants to plaintiffs provides coverage for the

1 claims made against plaintiffs by Albert M. Zlotnick in the  
2 complaint filed in the United States District Court for the Eastern  
3 District of Washington, Cause No. CV-04-0140-AAM.  
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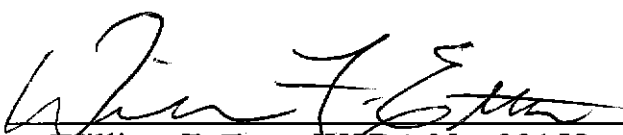
5 26. Enter judgment in favor of plaintiffs declaring that the defendants  
6 owe a duty to defend, and/or to pay the attorney fees, costs and  
7 litigation expenses incurred by plaintiffs to defend, the Zlotnick  
8 action.  
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12 27. Enter judgment in favor of plaintiffs declaring that defendants have  
13 an obligation to pay any sums, judgments or settlements, which are  
14 now owed or which may be owed by plaintiffs to Albert M. Zlotnick  
15 or any other person or entity on any claim alleged in the Zlotnick  
16 action.  
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21 28. Enter judgment awarding plaintiffs their attorney's fees and costs in  
22 this action, and any other relief the court deems just and equitable.  
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24 Dated this 17<sup>th</sup> day of June, 2004.  
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26 ETTER, McMAHON, LAMBERSON & CLARY, P.C.  
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28  
29 By   
30 William F. Etter, WSBA No. 09158  
31 Susan W. Troppmann, WSBA No. 22235  
32 Attorneys for Plaintiffs

PROOF OF SERVICE

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

On the 17<sup>th</sup> day of June, 2004, I caused to be served a true and correct copy of the foregoing *Complaint for Declaratory Judgment* by the method indicated below, and addressed to the following:

Liberty International  
Underwriters, Inc.  
55 Water Street, 18<sup>th</sup> Floor  
New York, NY 10041

Liberty Mutual Insurance Company  
175 Berkeley St.  
Boston, MA 02117

☐ Personal Service  
☒ U. S. Mail/Certified Mail/Return  
Receipt Requested  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile:

☐ Personal Service  
☒ U. S. Mail/Certified Mail/Return  
Receipt Requested  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile:

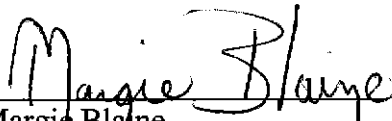
Mr. Paul Vallone  
Hinshaw & Culbertson LLP  
244 Jackson Street, Suite 300  
San Francisco, CA 94111

Washington State Office of Insurance  
Commissioner  
P. O. Box 40255  
Olympia, WA 98504-0255

☐ Personal Service  
☒ U. S. Mail/Certified Mail/Return  
Receipt Requested  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile:

☐ Personal Service  
☒ U. S. Mail/Certified Mail/Return  
Receipt Requested  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile:

DATED this 17<sup>th</sup> day of June, 2004, at Spokane, Washington.

  
Margie Blaine